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by the fraud of the opposing counsel, but the policy of the privilege clearly extends to the principal case. By the denial of discovery on the ground of privilege the plaintiff is assured that the statement cannot be used as evidence against her and is thus given all needed protection.

**EVIDENCE — RES GESTAE — DECLARATIONS OF AGENT — ADMISSIBILITY IN CORROBORATION.** — The defendant's chauffeur struck and killed plaintiff's son. Ten or fifteen minutes later, apart from the scene of the accident, the chauffeur, in reply to a question, said he was driving on a mission for his employer. This declaration was admitted in evidence. *Held*, the declaration should have been excluded. *Frank v. Wright*, 205 S. W. 434 (Tenn.).

Declarations of an alleged agent are not competent against the alleged principal to prove the fact of agency, because there is no authority to make such admissions. *Yoshimi & Co. v. U. S. Express Co.*, 78 N. J. L. 281, 73 Atl. 45; *Ennis v. Wright*, 217 Mass. 40, 104 N. E. 430. But if the agency is otherwise *prima facie* proved, they become admissible in corroboration. *Mullen v. Quinlan & Co.*, 195 N. Y. 109, 87 N. E. 1078; *Lemcke v. Funk & Co.*, 78 Wash. 460, 139 Pac. 234. As in the principal case, where the defendant owned the automobile, and where the driver was regularly employed as a chauffeur, the fact of agency on this occasion is presumed. *Stewart v. Baruch*, 103 App. Div. 577, 93 N. Y. Supp. 161; *Marshall v. Taylor*, 168 Mo. App. 240, 153 S. W. 527. See *Ludberg v. Barghoorn*, 73 Wash. 476, 481, 131 Pac. 1165, 1167. But even if the agency is otherwise *prima facie* proved, the declarations are admissible only when they constitute a part of the *res gestae*. *Lowden v. Wilson*, 233 Ill. 340, 84 N. E. 245; *U. S. Express Co. v. Rawson*, 106 Ind. 215, 6 N. E. 337. By the better view statements are considered part of the *res gestae* if they are spontaneous utterances and made so soon after the act in issue as to negative deliberation and design. See 31 HARV. L. REV. 801. On this point the instant case is sound.

**INSURANCE — WAIVER OF PRESUMPTION OF DEATH.** — A by-law of the defendant insurance company provided that long-continued absence would not be regarded as evidence of death or raise a presumption thereof. Plaintiff relied on the presumption raised by seven years' absence. *Held*, the effort to force new rules of evidence on the court was void. *Gaffney v. Royal Neighbors of America*, 174 Pac. 1014 (Idaho).

Formerly courts held invalid agreements that tended to deprive them of their jurisdiction. *Horton v. Sayer*, 4 H. & N. 643; *Hall v. People's Mutual Fire Insurance Co.*, 6 Gray (Mass.) 185; *Muldrow v. Norris*, 2 Cal. 74. Though such is no longer true, present-day courts do hold certain contracts invalid on the grounds, that where there is a relationship between parties, one of whom is not an absolutely free agent under nineteenth-century economic theory, the courts should protect the weaker party by limiting the freedom of contract with the stronger. Thus, an agreement in a lease giving the landlord power to confess judgment in an action of forcible detainer is void. *French v. Willer*, 126 Ill. 611, 18 N. E. 811. On similar principles the law limits the defenses of surety companies. *Segari v. Mezzei*, 116 La. 1026, 41 So. 245. Legislatures, with due regard to corporate interests, have prescribed such rules for the conduct of the business of insurance as will best protect the interests of the insured. *Commonwealth v. Vrooman*, 164 Pa. St. 306, 30 Atl. 217; *N. Y. Life Insurance Co. v. Hardison*, 199 Mass. 190, 198, 85 N. E. 410, 413; *Equitable Insurance Co. v. Commonwealth*, 113 Ky. 126, 67 S. W. 388; *Orient Insurance Co. v. Daggs*, 172 U. S. 557. It is doubtful, however, whether contracts made in accord with the by-law in the principal case give the insurance companies such undue advantages over individuals as to render the by-law void as against public policy.